Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

REPLY COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL

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SUMMARY

The New Jersey Division of Rate Counsel responds to the portions of initial comments that address the FCC's proposed reform of high-cost universal service funds, ("USF") described in its Notice of Rulemaking. Consistent with positions that Rate Counsel has previously expressed in numerous pleadings submitted to the FCC, Rate Counsel fully supports the FCC's actions to restrain growth in the nation's high-cost fund and to implement comprehensive reform. Unrestrained growth in the USF will jeopardize the affordability of basic local exchange service. Contrary to the position expressed in some initial comments, the FCC should not view the subscriber line charge as a way to implement universal service policy – the goal of universal service is to ensure that consumers have access to affordable service – an increase in the SLC would undermine that goal. Furthermore, carriers should not view current high-cost fund levels as an entitlement, and therefore the FCC should not presume that the existing levels are appropriate. Instead, there is ample evidence that the high-cost fund, as it now exists, should be reduced substantially.

Rate Counsel also cautions the FCC that without oversight and use of monitoring tools such as ARMIS reports, ILECs may use the much vaunted transition to a modern, broadband-based network as a way to justify their neglect of the public switched telephone network – instead, during the transition to broadband, ILECs should continue to be required to provide adequate basic local exchange service.

Part of any reform should entail establishing accountability and transparency so that the USF, which consists of consumer-generated funds, is expended efficiently and only where there is a well-demonstrated need for subsidies. The FCC should establish an

expectation during this transition to a broadband society that states may need to step up to the plate to provide matching funding to achieve broadband goals. Just as networks of interstate highways, state highways, and local roads depend on various sources of funding so too is it likely that the broadband network may rely on numerous sources of funding to ensure that the deployment of the Internet backbone and neighborhood broadband occurs. While in rural states, state subsidies may be needed to support deployment, in urban states, state subsidies may be needed to support affordability. The past model of high-cost support is not the ideal model for the nation's transition to affordable broadband services. Also, the FCC should adopt a negotiated procurement process rather than an auction, or reverse auction to ensure that broadband is deployed at the least cost. Finally, the FCC should implement long-overdue reforms to the high-cost fund immediately rather than await the establishing of the Connect America Fund.

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REPLY COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL

I. INTRODUCTION

With this filing, and pursuant to the schedule set forth by the Federal Communications Commission ("FCC" or "Commission"),[1] the New Jersey Division of Rate Counsel ("Rate Counsel") replies to the comments submitted by various entities regarding the Notice of Proposed Rulemaking ("NPRM") seeking comment on reform of the high-cost universal service program.[2] Specifically, the FCC seeks comment on measures that can be taken to reduce current high-cost fund support with the intent of transitioning those funds to support broadband services (and thus not increasing the overall fund while adding broadband as a supported service).[3]

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1 / FCC Public Notice, DA 10-846, May 13, 2010.

2 / Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, *Notice of Inquiry and Notice of Proposed Rulemaking*, FCC 10-58 (rel. Apr. 21, 2010) (Universal Service Reform NOI and NPRM). Rate Counsel's reply comments focus primarily on the NPRM, but address some topics that overlap with the issues raised in the NOI and NPRM.

3 / NPRM, at paras. 51-54.

Numerous parties submitted comments. Rate Counsel does not respond to all of the numerous filings submitted to the FCC, but rather responds to the salient issues raised that, in Rate Counsel's view, are of particular concern to consumers in New Jersey.[4] Furthermore, although the NPRM sought comments on specific issues, many comments contained many more general discussions of high-cost reform. The policy that the FCC sets forth in this proceeding will have far-reaching implications throughout the industry, affecting all consumers, and the quality of and prices for the information consumers receive.

A. INTEREST OF RATE COUNSEL IN THE INSTANT PROCEEDING.

Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings.[5] The above-captioned proceeding is germane to

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[4] / Approximately one hundred comments were filed. Rate Counsel's reply comments respond to many, but not all, of these comments.

[5] / Rate Counsel has participated in many FCC proceedings concerning the federal universal service program and the FCC's National Broadband Fund which implicates the Connect America Fund and universal service. In 2005, the Federal Communications Commission, issued "Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support," Public Notice, FCC 05J-1, August 17, 2005 ("Public Notice"). In response, Rate Counsel submitted initial and reply comments in CC Docket No. 96-45 (September 30, 2005 and October 31, 2005, respectively). See, also, *In the Matter of Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *Rural Health Care Support Mechanism*, WC Docket No. 02-60, *Lifeline and Link-Up*, WC Docket No. 03-109, *Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21, Comments of The New Jersey Division of The Ratepayer Advocate, October 18, 2005; Initial Comments of the New Jersey Division of Rate Counsel in WC Docket No. 05-337/CC Docket No. 96-45, March 27, 2006 ("Remand Comments"); Reply Comments of the New Jersey Division of Rate Counsel in WC Docket No. 05-337/CC Docket No. 96-45, May 26, 2006 ("Remand Reply Comments"); Initial Comments of the New Jersey Division of Rate Counsel on the Joint Board Recommended Decision in WC Docket No. 05-337/CC Docket No. 96-45, April 17, 2008 ("Rate Counsel Recommended Decision Comments"); Reply Comments of the New Jersey Division of Rate Counsel on the Joint Board Recommended Decision in WC Docket No. 05-337/CC Docket No. 96-45, June

Rate Counsel's continued participation and interest in implementation of the Telecommunications Act of 1996[6] as well as Title VI of the Communications Act of 1934, as amended, under Sections 601 et seq., 4 U.S.C. 521.

New Jersey consumers are net contributors to the high-cost fund and, as such, have an interest in ensuring that the high-cost fund is sufficient but not excessive. Ultimately, consumers foot the bill for universal service charges. The Commission's decisions regarding high-cost funds will affect New Jersey's consumers and competitive landscape.

B. OVERVIEW OF INITIAL COMMENTS

Initial comments address topics raised by the FCC in its NOI and in its NPRM. Rate Counsel's reply comments focus almost exclusively on the NPRM matters, but occasionally address issues that overlap with those raised by the NOI.

2, 2008 ("Rate Counsel Recommended Decision Reply Comments"); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *High-Cost Universal Service Support*, WC Docket No. 05-337, Comments of the New Jersey Division of Rate Counsel, April 17, 2008 ("Rate Counsel April 2008 USF Comments"), Reply Comments of the New Jersey Division of Rate Counsel, June 2, 2008 ("Rate Counsel June 2008 USF Reply Comments"); In the Matter of High-Cost Universal Service Support et al, WC Docket No. 05-337, Comments of the New Jersey Division of Rate Counsel, November 26, 2008, Reply Comments of the New Jersey Division of Rate Counsel, December 18, 2008; Comments of the New Jersey Division of Rate Counsel in WC Docket No. 05-337/CC Docket No. 96-45, May 8, 2009 ("Remand Refresh Comments"); In the Matter of High-Cost Universal Service Support, WC Docket No. 05-337, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 09-28, *Notice of Inquiry*, rel. April 8, 2009 ("Remand Refresh NOI"); *In the Matter of A National Broadband Plan for Our Future*, GN Docket No. 09-51, Comments of the New Jersey Division of Rate Counsel, June 8, 2009; Comments of the New Jersey Division of Rate Counsel in WC Docket No. 05-337/CC Docket No. 96-45, January 28, 2010 ("Remand FNPRM").

[6] / Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the 1996 Act," or "the Act," and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

II. REPLY TO COMMENTS

The NPRM properly acknowledges that consumers ultimately bear the cost of federal universal service funds.

In the NPRM, the Commission states:

> The National Broadband Plan recommends that the Commission cut inefficient funding of legacy voice service and refocus universal service funding to directly support modern communications networks that will provide broadband as well as voice services. *In this NPRM, we propose to contain growth in legacy high-cost support mechanisms as a critical first step to transitioning to a more efficient and accountable funding mechanism, recognizing that consumers across America ultimately pay for universal service.* We propose specific reforms to the legacy high-cost program that could be initially implemented to create a pathway to a more efficient and targeted mechanism for funding broadband. We seek comment on these proposals.[7] (Emphasis added)

Rate Counsel fully supports the FCC's goal of "transitioning to a more efficient and accountable funding mechanism." Rate Counsel concurs with National Cable & Telecommunications Association ("NCTA") that controlling the size of the high-cost program is essential.[8] Among other goals, the FCC should balance rural states' reliance on federal high-cost support with the goal of ensuring that consumers not be expected to support an open-ended and increasing level of universal service support.

Rate Counsel, as a consumer advocate representing a state with no high-cost areas, although appreciative of the unique cost challenges that rural states face, is nonetheless concerned by the structure of the current high-cost fund, and, therefore, supports measured steps toward reform. Consumers pay for USF, and therefore accountability is critical.

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7 / NPRM, at para. 50 (note omitted).

8 / NCTA, at 5. *See also,* Sprint Nextel Corporation ("Sprint") , at 1, referring to the "bloated legacy high-cost USF."

Rate Counsel echoes the support of the Massachusetts Department of Telecommunications and Cable ("Massachusetts DTC") for the Commission's decision to cap support to incumbent local exchange carriers ("ILEC") and echoes the Massachusetts DTC's agreement with the Commission "that such a step will help to minimize the burden on consumers 'who ultimately pay for universal service through carrier pass-through charges.'"[9]

Massachusetts DTC recommends that the FCC: (1) apply the cap to each ILEC's individual high-cost support mechanism separately for each state; (2) ensure that reductions apply in those instances where the uncapped support amount would be less than the capped amount; and (3) apply the caps immediately upon the date of the Commission's order.[10] Verizon and Verizon Wireless ("Verizon") also recommend that the Commission cap high-cost funding for each ILEC on a study area basis.[11] Verizon estimates that if a per-study area cap on high-cost funds had been in place between 2008 and 2010, with a cap based on 2007 levels, there would have been a savings over the three years of almost $750 million.[12] Rate Counsel supports this proposed reform to the high-cost fund, and, Rate Counsel, as it has urged in previous pleadings, further proposes that high-cost support be eliminated entirely for non-rural carriers.

Wyoming Public Service Commission ("Wyoming PSC") primarily addresses the Broadband Assessment Model, but also raises concerns about the potential combined

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9 / Massachusetts DTC, at 3, citing NPRM, at paras. 51-52; *see also* NCTA, at 8, supporting a cap at the per-line level and as a second alternative, at the study area level. COMPTEL supports a cap based in part on 2010 levels but "minus the most current estimate of improper payments made from the fund." COMPTEL, at 6.

10 / Massachusetts DTC, at 3.

11 / Verizon, at 3, 9-11.

12 / Verizon, at 11 and Attachment A.

impact of CenturyLink's pending acquisition of Qwest and the FCC's proposal to cap legacy support.[13] As a rural telephone company, CenturyLink's federal high-cost support is based on its embedded investment and expenses, while Qwest, as a non-rural carrier, receives high-cost support based on the FCC's high-cost model support.[14] Wyoming PSC estimates that if the FCC had capped legacy support for Wyoming's rural telephone companies in 2003 at 2003 support levels (expressed on a per-loop basis), Chugwater Telephone Company, which serves Platte County Wyoming, would receive only $72.23 today instead of the actual support of $160.90 that it receives.[15] In Wyoming PSC's view, the combined effect of the FCC's erroneous view that Platte is already 100% served with broadband and its proposal to cap USF funds "will create an unsustainable telecommunications environment for Chugwater Telephone Company and its customers."[16]

Rate Counsel is hopeful that improved data collection and mapping will address Wyoming PSC's broadband concerns, and result in Platte County's ability to obtain broadband support as needed. Regarding the impact of the proposed cap on high-cost support, Rate Counsel responds as follows: first, in deciding to acquire Qwest, CenturyLink presumably is well-acquainted with the evolving nature of federal universal service funding, and one would assume has taken this uncertainty into account as it projects its future, post-merger costs and revenues. Although Rate Counsel recognizes that rural states such as Wyoming confront unique and challenging cost characteristics, it

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13 / Wyoming PSC, at 9.

14 / Wyoming PSC, at 9.

15 / Wyoming PSC, at 9.

16 / Wyoming PSC, at 10.

is important that federal universal service funds – which all consumers must support – are capped to encourage efficiencies and to ensure that states also shoulder some of the cost of ensuring that ILECs offer affordable service within their boundaries. In some instances, states may need to supplement federal universal support, depending on choices that state regulators have made regarding companies' regulatory framework, return on investment, retail rate levels, and other aspects of state regulation. The alternative that the Wyoming PSC apparently seeks -- an indefinitely open-ended supply of federal high-cost support -- would not be fair to the nation's broad base of consumers, who ultimately must pay for the federal universal service fund.

Rate Counsel concurs with the New Jersey Board of Public Utilities ("New Jersey BPU"), which not only supports the FCC's proposal to cap the high-cost fund but also recommends that the fund be reduced.[17] The New Jersey BPU states: "New Jersey ratepayers have paid more than $1.1 BILLION in excess of what they have received from the Fund in just six years (2003-2008), OVER A BILLION DOLLARS!!"[18] Further, the New Jersey BPU states:

> It is time to reduce the burden on urban states such as New Jersey and its ratepayers, many of whom struggle to pay for their own services, from having to subsidize voice, and now potentially broadband service for rural consumers. The citizens of Newark, Camden and other New Jersey cities and communities should not have to help pay for service to consumers in rural states.[19]

New Jersey consumers are net contributors to the Universal Service High-cost Fund. New Jersey consumer contributions made up 3.36% of the total fund in 2008 and payments to New Jersey service providers amounted to just 0.79% of the total

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[17] / New Jersey Board of Public Utilities, at 5.

[18] / New Jersey Board of Public Utilities, at 5.

[19] / New Jersey Board of Public Utilities, at 6.

payments.[20] In 2008, New Jersey received a negligible $1.2 million of the total $4.5 billion in high-cost support disbursement.[21] Rate Counsel echoes Verizon's statement that the Commission should seek "to minimize the burden on consumers."[22] Rate Counsel supports in part Sprint's position that the FCC should not only reduce legacy high-cost USF to ILECs but should phase it out.[23] Rate Counsel does not seek reform for the results-oriented consequence of eliminating all support for voice service, but rather seeks reform so that USF for voice service is limited to those few areas where need is thoroughly demonstrated and warranted. Generally, urban and rural rates are reasonably comparable, and there is insufficient evidence to suggest that ILECs could not sustain this reasonable comparability without high-cost support. Furthermore, by transitioning USF support to broadband, the FCC can promote the development of a common broadband platform, which can support affordable voice *and* affordable broadband services.

The FCC's universal service policy should address the unique concerns of those states that are net contributors to the USF.

The Five MACRUC States of the Mid-Atlantic Conference of Regulatory Utility Commissioners ("the Five MACRUC States") are net contributors to the USF.[24] The Five MACRUC states advocate several preconditions for recipients of USF: demonstrate local reforms (local rate increases, reductions in access rates, state universal service funds), broadband deployment and state matching funds.[25] Rate Counsel agrees with the

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20 / Universal Service Monitoring Report, FCC CC Docket No. 98-202, prepared by Federal and State Staff for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, 2009 (Data received through August 2009), at Table 1.12.

21 / *Id.*, at Tables 1.12 and 3.14.

22 / Verizon, at 7.

23 / Sprint, at 11.

24 / Five MACRUC States, at 3.

25 / Five MACRUC States, at 4.

Five MACRUC States that low-income consumers in non-rural areas cannot continue to support voice and now, broadband service, without reforms on the part of recipient states.[26] Rate Counsel generally supports the proposal of the Five MACRUC States:

> . . . the carriers or states in the MACRUC region should not lose current FUSF [federal USF] support for voice service simply because they have demonstrated broadband programs in place or substantially completed. That support, to the extent there is a transition from voice to broadband, should be returned to MACRUC carriers or states to support demonstrated broadband deployment or support comparable rates for comparable services. This could be in the form of increased FUSF support for the Lifeline broadband adoption programs or similar programs that provide support for consumers that might not otherwise be able to buy broadband service.[27]

Rate Counsel is not persuaded, however that contributor states with "broadband deployment programs"[28] in place should retain the cost support that carriers currently receive in the states "provided the recipient or commission can credibly demonstrate substantial deployment of broadband services through reliance on the support they currently receive from the federal USF."[29] The concept is appealing, but it is unclear how the "reliance" would be determined nor does the proposal define "substantial" relative to deployment. Rate Counsel does, however, agree that: "It would be inequitable to require net contributor states with successful broadband programs in place to forego support for broadband service deployment and adoption programs while assuming the costs for similar broadband service deployment or adoption programs in other regions without [the reforms referred to above, i.e. reductions in access charges, matching grant

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[26] / Five MACRUC States, at 4.

[27] / Five MACRUC States, at 4.

[28] / *See,* Five MACRUC States, at 4. It is unclear whether the carrier or state "broadband programs" referred to in the comments are intended to be "official" state programs or simply any instance where a carrier has demonstrated broadband deployment.

[29] / Five MACRUC States, at 6.

programs]."[30] Federal universal service funds and policy should address not only the deployment of broadband but also barriers to adoption, such as the affordability of service.

Furthermore, diverse sources of funding are contributing to the development of the nation's infrastructure: Just as networks of interstate highways, state highways, and local roads depend on various sources of funding so too should the broadband network rely on numerous sources of funding.

MACRUC also makes the following proposal:

> The Five MACRUC States suggest that any cap set at the 2008 or 2010 level be with conditions. Carriers or recipients that relied on that support to comply with a mandate to provide voice service ubiquitously throughout a study area and to complete broadband deployment commitments should not have that FUSF [federal USF] support eliminated. Any FUSF support for a recipient that has already met any broadband deployment mandate should continue to be provided to the carrier or state, albeit possibly in a 'block grant' format, to promote broadband or adoption programs as opposed to just broadband service deployment. Any other approach that takes away support will likely engender litigation.[31]

Rate Counsel acknowledges that those states that are net contributors understandably would not seek to lose the limited USF support that they do receive, but urges the Commission, in the "re-assignment" of any federal subsidies, to ensure that the monies are allocated in an efficient, competitively neutral manner, that, to the greatest extent feasible, provides users with subsidies rather than carriers. Also, as the Five MACRUC States explain, simply freezing the high-cost fund does not make sense: "this reliance on embedded network costs for voice communications ignores the considerable collapse in costs attributed to Moore's Law as recipients have deployed more efficient and less

[30] / Five MACRUC States, at 11.

[31] / Five MACRUC States, at 13.

costly digital and/or Internet Protocol (IP) networks to replace older copper and analog networks."[32]

The Pennsylvania Public Utility Commission ("Pennsylvania PUC") shares the Five MACRUC States' concerns that the reforms contained in the NPRM "would unfairly penalize early adopter states or carriers . . ."[33] The Pennsylvania PUC states further:

> The proposed reforms that limit support to broadband deployment, as opposed to ongoing voice and broadband support, are self-defeating. First, if support for the provision of service is eliminated, then the carriers that are currently provided service will no longer be able to do so. Thus, the nation will have upgraded facilities and no users of the facilities (sic). Second, because carriers typically use one network to provide voice and broadband service, removing support for the provision of voice service removes support for the provision of broadband service.[34]

Yet, there is no evidence that carriers that relied on federal USF support for voice and for broadband deployment in the past are unable to maintain service without the same magnitude of dollars they are now receiving. Rate Counsel is sympathetic to the Pennsylvania PUC's concern that early adopter states should not be penalized. Rate Counsel has consistently argued that broadband funds cannot simply go to unserved areas, but must be used for underserved areas and for programs like Lifeline that address affordability issues. However, Rate Counsel respectfully disagrees that continued support, *at the same levels and under the high-cost program*, is required "to allow for the continued provision of broadband services and to allow for the return on and return of those broadband investments."[35] To the extent that federal USF subsidies (for which end

[32] / Five MACRUC States, at 6 (cite omitted).

[33] / Pennsylvania PUC, at 2.

[34] / Pennsylvania PUC, at 3.

[35] / Pennsylvania PUC, at 3.

users ultimately foot the bill) enable carriers to deploy broadband services, it is entirely unclear why those carriers should be entitled to receive the full return on the investment. Where deployment has already occurred, the more relevant question is whether the carrier can *now* maintain the system with the total revenues that it receives for voice and broadband. Pennsylvania PUC states also: "Early adopters are dependent on current support levels to cover expenses and pay for the return on and of capital."[36] Rate Counsel agrees that the broadband portion of the USF support should "not only pay for the initial roll-out of the service but also support for its long term viability,"[37] but support for ongoing operational expenses should only be provided where need is thoroughly documented: past receipt of USF should not become an entitlement to future receipt of USF. For example, the support that is needed for the ongoing operation and maintenance of a broadband-capable network may be less than the support that was necessary at the outset to make the network broadband-capable.

The Pennsylvania PUC presents an alternative proposal in its initial comments. The proposal would address all five federal USF mechanisms and require recipients to meet availability[38] and service quality goals in order to continue to receive all or part of the recipient's current support.[39] Rate Counsel fully supports the FCC's imposition of requirements that are linked to the receipt of any universal service support, whether for

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[36] / Pennsylvania PUC, at 15.

[37] / Pennsylvania PUC, at 16.

[38] / The Pennsylvania PUC proposal (pages 16-18): would allow ILECS to keep current support levels if they meet certain criteria and benchmarks with five years. Broadband availability standards would be established for the first, third, and fifth years of 90%, 95%, and 98%, respectively of all residential customers. Broadband is defined as 768kbps, 1.5 mbps, and 4 mbps in years one, three and five, respectively. A carrier would continue to receive 100% of its current support if it met those standards and would receive a prorated portion of support to a minimum availability of 40%, 50%, and 60% for years one, three, and five, respectively.

[39] / Pennsylvania PUC, at 7.

voice, broadband or both. A major flaw in the existing universal service programs is the utter lack of accountability by carriers, which has resulted in a sense of entitlement without transparency. Furthermore ILECs' service quality is an issue of investigation by various state regulatory commissions, and, therefore, it is entirely appropriate to require carriers to meet certain standards of service as a precondition to receiving universal service support. Assuming that the current level of support is not excessive, the Pennsylvania PUC's alternative proposal has merit.

Universal service support – whether for voice or broadband – should only be provided where there is a well-documented need.

Rate Counsel supports the FCC's transition of the USF to support broadband deployment and affordability. It is long overdue for the nation to be moving away from supporting a voice network that does not offer broadband and instead to be supporting a broadband network that can also offer voice services. Regarding traditional high-cost support for voice, with some caveats, Rate Counsel recommends that the FCC give careful consideration to NCTA's proposal that the FCC take into account the presence of unsubsidized competition in relevant study areas as well as the status of state regulation of retail rates.[40] Rate Counsel agrees in theory that in those markets where competitors have been able to successfully enter and provide service, universal service support is superfluous. However, if the "unsubsidized wireline competitors [who] offer service to more than 75 percent of the customers in an area without support"[41] are only offering triple play services with bundle prices of $99 or more per month, the FCC should not necessarily conclude that competitive entry for basic local exchange service is possible

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40 / NCTA, at 10-12.

41 / NCTA, at 10.

without support. NCTA's proposal would have more merit if its members would commit to offering voice and broadband separately on a stand-alone basis at affordable rates. Furthermore, any future broadband subsidy offered through a CAF-like arrangement should be available to further the goal of affordability as well as the goal of deployment. Finally, Rate Counsel fully supports NCTA's proposal that where an ILEC has obtained full rate deregulation, universal service support is no longer necessary.[42]

A universal service fund should not be used as a "make-whole" mechanism but rather should target support where such a need is clearly demonstrated.

While AT&T supports the direction that the Commission is taking and believes that "the Commission's universal service program could be one of the Commission's most potent tools to achieve ubiquitous broadband,"[43] AT&T argues that by "proposing to eliminate legacy high-cost support without indicating how this transitioned support will be distributed via the Connect America Fund ("CAF"), if at all, the Commission has essentially jumped the gun."[44] AT&T proposes that the Commission first identify the regime to which the parties would be transitioning and then seek comment on the transition.[45] Certainly, the Commission is seeking questions about transitions and glide-paths with only skeletal information about the CAF. On the other hand, entirely apart from the CAF, the Commission should reform universal service funding, and should take steps in a timely manner to reduce any unnecessary high-cost spending related to ensuring that consumers have access to affordable voice service offered at reasonably comparable rates in urban and rural areas.

42 / In supporting this aspect of NCTA's proposal, Rate Counsel is not, however, implying that it would necessarily have supported the decision to deregulate retail rates.

43 / AT&T, at 1 (note omitted).

44 / AT&T, at 3 (note omitted).

45 / AT&T, at 3-4.

Not surprisingly, USTelecom is concerned about "whether disbursement of new funds will coincide with elimination of existing funds."[46] USTelecom proposes two immediate measures: (1) stop using statewide average costs for purposes of determining eligibility for non-rural high-cost funds and (2) only price cap carriers to make on-time election to use forward-looking cost mechanism on a holding company basis.[47] USTelecom argues that this will target funds to areas that need broadband funding. USTelecom would have the FCC simply continue using the existing high-cost funds instead of CAF, stating: "If the transparency or accountability of the indirect use of legacy funds to extend broadband service on an interim basis remains a concern, the Commission can and should address those issues directly."[48] USTelecom also supports a long-term transition to direct funding of broadband and voice.[49] Rate Counsel disagrees with USTelecom's reasoning. There is no reason a priori to assume that the existing high-cost support mechanisms provide a reasonable foundation for the disbursement of future broadband subsidies. Instead, the FCC should pursue the long-overdue and comprehensive reform of existing high-cost funds and, on a parallel track, design appropriate mechanisms for supporting the deployment and affordability of broadband service.

AT&T supports the proposal in the National Broadband Plan that the Commission allow gradual subscriber line charge ("SLC") increases and consider deregulating the

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46 / USTelecom, at 9. Rate Counsel does agree with USTelecom that the FCC could resolve the phantom traffic, traffic pumping, VoIP traffic issues, and reduce access rates sooner rather than later. USTelecom, at 10.

47 / USTelecom, at 12.

48 / USTelecom, at 14.

49 / USTelecom, at 14.

SLC in those areas where local rates are deregulated.[50] Rate Counsel strongly opposes such a policy because it would unnecessarily harm consumers, and would allow carriers to evade accountability and transparency for their purported need to recover revenues. Among other things, if local rates are deregulated, carriers have the opportunity to raise them. It is entirely inappropriate and poor public policy to use the SLC – which, in the consumer's view is simply a federally mandated and "blessed" charge – as a way for carriers to raise their rates.[51] Carriers should not be "hiding behind" the federal SLC.

Rate Counsel strongly opposes the National Broadband Plan proposal to raise the SLC,[52] and urges the Commission to discontinue further consideration of such a revenue recovery mechanism. Although carriers use a common network to offer broadband service, carriers categorize broadband revenues as unregulated dollars, and then seek government-sanctioned increases to the regulated voice service. It is patently unfair to consumers to pay *more* for the public switched network through higher subscriber line charges when carriers retain the DSL revenues on the unregulated side of the accounts. Rate Counsel acknowledges the simplicity (and thus appeal) of increasing the SLC as a way to derive revenues but that route toward revenue generation enables carriers to dodge responsibility and accountability.

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50 / AT&T, at 18-19.

51 / *See* COMPTEL, at 10, stating that the "universal service assessment essentially amounts to a tax on an essential service that must be paid by voice service subscribers."

52 / Federal Communications Commission, *Connecting America: The National Broadband Plan*, report submitted to the U.S. Congress, March 17, 2010 ("Plan" or "NBP"), Chapter 8, at 148.

Federal legislation adds a new dimension to the FCC's NPRM

Many of the issues about which the FCC seeks comment in its NPRM are implicated by the recently introduced Universal Service Reform Act of 2010.[53] Therefore, although Rate Counsel appreciates the opportunity to respond to the initial comments submitted in this docket, Rate Counsel also is concerned that congressional efforts could overtake the FCC's proceeding. If and when the legislation is enacted, Rate Counsel recommends that the Commission issue a revised NPRM that incorporates the congressional mandate in order to focus comments more appropriately. On the other hand, Congress has discussed universal service legislation for several years, and therefore the FCC should continue its own efforts to reform universal service pending any Congressional mandate.

The Commission should eliminate rather than cap non-rural high-cost support, should cap rural high-cost support, and should gradually eliminate rural high-cost support.

The Commission seeks comment on capping legacy high-cost support provided to incumbent carriers at 2010 levels.[54] High-cost support includes rural and non-rural high-cost support. Rate Counsel reiterates its recommendation that non-rural high-cost support for voice should be eliminated, not capped.[55] There is no a priori reason that the current

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53 / The Universal Service Reform Act of 2010 (H.R.5828) was introduced by Representatives Rick Boucher (D-VA) and Lee Terry (R-NE) on July 22, 2010. It was referred to the House Committee on Energy and Commerce on that date. The text of the bill and its status can be reviewed at: http://www.thomas.gov/cgi-bin/query/z?c111:H.R.5828:

See, also, http://www.boucher.house.gov/index.php?option=com_content&view=article&id=2009:boucher-terry-introduce-universal-service-reform-act-of-2010-july-22-2010&catid=33&Itemid=41.

54 / NPRM, at paras. 51-52.

55 / Four years ago, Rate Counsel proposed, as a condition of the AT&T/BellSouth merger, that the Applicants no longer receive funds from the non-rural high-cost universal service fund. Ratepayer Advocate initial comments in WC Docket No. 06-74, June 5, 2006, at 5, 22. More recently, in November 2008 comments, Rate Counsel stated: "While Rate Counsel commends the Commission for proposing to cap the high-cost fund, the implementation of a cap should be seen as a first step in the reform process . . .

amount is justified and therefore USTelecom's logic that the high-cost fund has been stable for "a number of years" and thus other parts of the universal service fund are up for review[56] is not persuasive. The FCC should not confuse "stability" with justification. Verizon observes that "the apparent stability in total ILEC support masks significant changes in the composition of the fund," and that while high-cost support for price cap ILECs declined by $464 million between 2005 and 2010, high-cost support for rate-of-return ("ROR") ILECs increased by $278 million.[57] The reason for the increase in support for ROR carriers is not clear and should not continue, and indeed carriers should be becoming more not less efficient in their provision of basic service.

As Verizon observes, the existing USF mechanism provides some support for broadband.[58] If one of the reasons for the increased support level is broadband deployment, that cause should be separately identified so as not to muddle the issue of basic voice support and broadband subsidies.

Rate Counsel's comments regarding the Qwest II remand, are relevant to the FCC's NPRM:

> Rate Counsel reaffirms its repeated recommendation that the Commission eliminate non-rural high-cost support. There is simply no evidence that high-cost support is necessary in order for non-rural carriers to provide the basic loop at just and reasonable rates nor that high-cost support has resulted in lower rates. Indeed, there is no evidence that costs are related to rates and it is difficult to justify the continued flow of high-cost funds to

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the linkage of provider of last resort funds with broadband funds will make it that much more difficult to reduce or sunset high cost payments in the future. Indeed, Rate Counsel continues to support the elimination of high-cost support to Bell operating companies because there is no evidence that they require universal service subsidies in order to provide affordable service." Rate Counsel Comments, Dkts 05-337/95-45 et al, November 26, 2008, at 10.

56 / USTelecom, at 3.

57 / Verizon, at 12. *See, id.* stating that expressed on a per-line basis, USF support for ROR ILECs increased between 2005 and 2010 from $21.78 per line per month to $30.57 per line per month.

58 / Verizon, at 13.

carriers whose rates have been deregulated as a result of purported competition.[59]

Rate Counsel supports a shift to supporting broadband service, and indeed last year stated: "The focus of universal service funding, therefore, should shift to broadband service in order to ensure sufficient support and reasonable comparable access by all consumers throughout the country to affordable broadband service."[60] However, such support should be targeted, justified, and distributed fairly among states: for example, rural states may require federal subsidies to complete deployment to unserved areas while urban states may require federal subsidies to ensure that consumers can afford to subscribe to broadband service. Furthermore, states should be required to provide matching funds for broadband.[61]

Massachusetts DTC supports the Commission's proposal to cap the high-cost fund, but suggests that the cap should be applied to each ILEC's support mechanism in each state; that reductions are applied if uncapped support amount is lower than cap; and that the cap should be effective immediately upon Commission order.[62] Rate Counsel agrees with Massachusetts DTC that a cap should not represent the fixed amount of support going forward, but that support may continue to decrease.[63]

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59 / In the Matter of High-Cost Universal Service Support, FCC WC Docket No. 05-337; Federal-State Joint Board on Universal Service, FCC CC Docket No. 96-45, Comments of the New Jersey Division of Rate Counsel, January 28, 2010, at 6, citing Rate Counsel Remand Refresh Comments, at 11-12 and Rate Counsel Recommended Decision Comments, at 43.

60 / Rate Counsel Remand Refresh Comments, at 7.

61 / See, also, New Jersey BPU, at 13, which states: "It is this Board's contention that any restructure of the federal high-cost fund must include a matching funds requirement for a state to be eligible for high-cost support."

62 / Massachusetts DTC, at 3.

63 / Massachusetts DTC, at 4.

AT&T suggests that the Commission has never shown that the current high-cost fund meets the principles in 254(b) but that it will not oppose a cap on the funding "so long as the Commission gives carriers the flexibility to recover lost revenues from their end users."[64] Rate Counsel adamantly opposes AT&T's recommendation that it seek revenue recovery from its end users through a subscriber line charge. Where AT&T has pricing flexibility for its local rates, it may raise rates pursuant to the parameters set forth by the relevant state regulatory commissions. Those ILECs that lack such flexibility can submit supporting documentation to state regulators demonstrating the need for such a rate increase.[65] In no event should the FCC give the ILECs a blank check for revenue recovery to be covered by consumers through increases in the federal SLC. The fact that it is "easy" to raise the SLC does not make it fair or appropriate to do so.

Transparency in subsidies, whether for broadband or for voice, is essential.

Rate Counsel supports the Commission's statement that "[t]he intent of these proposals is to eliminate the indirect funding of broadband-capable networks today through our legacy high-cost programs, which is occurring without transparency or accountability for the use of funds to extend broadband service."[66] Transparency and accountability for the use of subsidies to extend broadband service are essential.

Rate Counsel has been a long-time advocate of expanding universal service to include affordable broadband access.[67] However, simply using the existing high-cost

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64 / AT&T, at 21.

65 / Indeed if costs were properly assigned and allocated between regulated and unregulated services, a rate increase may not be warranted.

66 / NPRM, at para. 53

67 / *See, e.g.*, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Comments of the New Jersey Division of The Ratepayer Advocate, September 30, 2005, at 26.

mechanism to fund broadband deployment results in a loss for New Jersey consumers. Rate Counsel reiterates concerns previously submitted to the FCC:

> Rate Counsel also opposes the linkage between the high-cost fund and broadband deployment because such a plan limits broadband deployment efforts to high-cost study areas, ignores demand-side issues, and fails to make funds for broadband deployment explicit and targeted. In addition, while implicit in the Commission's decision to require broadband deployment by carriers that receive high-cost fund is the implication that carriers are currently receiving too much money there is absolutely no evidence that adding the requirement to deploy broadband fixes the excessive subsidization problem.[68]

AT&T proposes that the Commission "declare" that all eligible telecommunications carriers ("ETC") can use legacy high-cost support to fund broadband deployment in their areas and asserts that such a declaration would "by itself, jump-start broadband deployment."[69] AT&T also notes that the Commission has already found that support for broadband deployment must continue in places that already have been using high-cost funds in this manner. AT&T is concerned that the Commission will focus only on unserved areas and that when high-cost funds dry up in areas that, but for the high-cost support would not otherwise have broadband, coupled with intercarrier compensation reductions, carriers will no longer offer broadband.[70] AT&T asserts that the National Broadband Plan does not address this problem adequately.[71] Rate Counsel

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68 / RC Comments, Dkts 05-337/95-45 et al, November 26, 2008, at 10. *See also, id.*, at 11: "By linking support for broadband deployment to the existing High Cost support mechanism, the Commission would focus broadband support only on those areas that already receive High Cost support, which would exclude those areas of the country that are not high-cost areas and yet that lack broadband access. Furthermore, by linking broadband subsidies to the high cost program, the FCC would complicate unnecessarily the implementation of long-overdue reform to the high cost fund."

69 / AT&T, at 4.

70 / AT&T, at 12-13. AT&T cites rural carrier associations as stating that current high-cost funds and intercarrier compensation revenues can account for half of a carrier's revenues in some cases. AT&T, at 13 (note omitted).

71 / AT&T, at 13.

disagrees with AT&T's view and recommends that broadband-based subsidies be linked to clear demonstration of need rather than be provided through the diffuse high-cost fund that now exists.

Wyoming PSC's comments illustrate the overlap between the issues raised in the NOI and the NPRM. For example, Wyoming PSC explains that the existing USF supports voice lines that "are supposed to be readily scaled up to provide broadband since the FCC's high-cost model assumes that supported copper lengths are no more than 18,000' long, enabling the provision of DSL" and that therefore it is important for the FCC "to continue support for maintaining existing lines that are available to provide broadband in a scalable fashion."[72] Rate Counsel acknowledges that the public switched network cannot be neatly separated into voice and broadband components, and that, for example, in order to be able to offer broadband, telephone companies may need to make improvements to their basic network. However, Rate Counsel is concerned that ILECs may seek to game the USF process by obtaining subsidies to support broadband yet also seeking rate increases for basic local exchange service because the carriers purportedly cannot earn a reasonable return on basic local exchange services.

CenturyLink asserts that "ILEC wireline networks will continue to serve as critical infrastructure for most basic and advanced services across multiple technologies and topologies for the foreseeable future" and that therefore the existing wireline network, as the foundation for broadband deployment, should be supported.[73] CenturyLink states that "[a]lthough the National Broadband Plan is seeking to create a

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72 / Wyoming PSC, at 22.

73 / CenturyLink, at 3.

CAF that would specifically focus on delivering broadband to areas that cannot economically support broadband services, it should not be created by eliminating support that is already serving that purpose."[74] The challenge for the FCC, then, is to distinguish between one-time costs that may be necessary to upgrade ILECs' networks to support broadband from the ongoing, recurring costs that may be necessary to operate broadband-capable networks. Rate Counsel recognizes that a network that has been neglected cannot support broadband services, but nonetheless is not persuaded that open-ended high-cost support is justified. USTelecom states that USF funding for broadband should not be available solely to unserved areas because many of the areas that are now served would not be except for the past availability of USF support.[75] As stated above, it is essential that universal service reform establish clear accountability for the use of subsidies so that consumers are not burdened with excessive USF contribution factors. Furthermore, in assessing the need, if any, for universal service support, the FCC should consider the impact of the substantial merger synergies that industry has forecast and has been able to achieve through its waves of market concentration.

The New Jersey BPU proposes that the FCC needs to continue to "investigate" broadband availability "before making any determination that support for broadband is even necessary from the Fund."[76] Rate Counsel respectfully disagrees with the New Jersey BPU that the FCC should await the results of the broadband data and mapping programs underway by the National Telecommunications and Information Administration ("NTIA") to determine whether federal USF support is necessary to

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74 / CenturyLink, at 38.

75 / USTelecom, at 8.

76 / New Jersey BPU, at 11.

supplement the existing State Broadband Data and Development Grant program.[77] Not only is there a high-cost to ensuring that broadband is *deployed* universally, but more importantly there likely is a need to ensure that broadband is *affordable* universally. Broadband subscribership in economically disadvantaged communities lags behind national adoption rates, which underscores the importance of pursuing both availability and affordability in any new federal USF support for broadband.

Rate Counsel supports elimination of Interstate Common Line Support ("ICLS") and Interstate Access Support ("IAS").

The FCC seeks comment on the National Broadband Plan's proposal to eliminate Interstate Common Line Support ("ICLS"), and Interstate Access Support ("IAS").[78] Rate Counsel reiterates its view that "universal service funding should not be used to compensate carriers for minutes lost to competitors."[79] USTelecom asserts that IAS funds cannot be eliminated until the revenues that carriers will receive from the reformed intercarrier compensation and universal service frameworks "can be reasonably predicted."[80] Similarly, CenturyLink asserts that the "substantial support for rural networks [from the existing USF system] ... cannot be ignored during the transition to the CAF" and opposes the elimination of the IAS until the CAF is fully implemented.[81] ICLS replaces access charge subsidies for rate of return ("ROR") carriers and IAS replaces access charge subsides for price cap carriers. Rate Counsel concurs with

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[77] / *Id.*

[78] / NPRM, at paras. 56-58.

[79] / RC Reply Comments, Dkts 05-337/95-45 et al, December 18, 2008, at 8. *See also* April 17, 2008 comments, at 54, in which Rate Counsel agreed with Joint Board recommendation that the FCC should cap all five mechanisms.

[80] / US Telecom, at 3.

[81] / CenturyLink, at 35.

Verizon that "[a]ccess charge replacement funding, designed to give carriers a soft landing following reductions in intercarrier compensation rates, cannot last forever in a competitive environment."[82] If there are jurisdictions where CenturyLink and other carriers are concerned that, without these funds they will be unable to earn a reasonable return on investment (as CenturyLink suggests),[83] such carriers should be subject to greater state regulatory scrutiny of their revenues and expenses to ensure that support is only provided where truly necessary. As Sprint observes, the IAS element, which was adopted in conjunction with the CALLS plan, was not intended to be permanent, and "[p]rice cap carriers that have been receiving IAS have had almost a decade to address any remaining shortfalls, and there is no reason to continue providing this subsidy."[84] Furthermore, CLECs, which are not eligible to receive IAS subsidies, will be able to compete better with price cap LECs "without the distortive effect of this enormous subsidy."[85]

The pace of the elimination of the IAS is an issue of contention. For example, Verizon proposes that the Commission phase out the IAS over time, by for example, reducing it by 20% per year, and should reduce ICLS support on the same schedule.[86] CenturyLink is concerned about a "financial see-saw" if the FCC eliminates the IAS before it establishes the CAF, and so recommends that the beginning of the IAS phase-

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82 / Verizon, at 3; *see also id.*, at 15-16.

83 / CenturyLink, at 37.

84 / Sprint, at 13.

85 / Sprint, at 13.

86 / Verizon, at 17. *See also* CenturyLink, at 39 proposing a five-year phase out of IAS, but not to begin until a permanent CAF is established and distributing funding.

out coincide with the beginning of the CAF.[87] Many regulatory uncertainties likely complicate financial predictions for ILECs including such unknown outcomes as the pending interstate special access proceeding, carrier access charge reform, and universal service. However, the FCC should move forward with long-overdue universal service reform rather than attempt to resolve all outstanding regulatory matters at one time.

Massachusetts DTC neither opposes nor supports the FCC's proposed elimination of IAS support, but points out that it is the only source of support that Massachusetts receives, and elaborates further that under the current system, Massachusetts receives total high-cost support of only $0.22 per dollar that it contributes, in comparison with the $4.97 that Mississippi receives for each dollar that it contributes.[88] Massachusetts DTC highlights the fact that for many net-payor states the IAS support may be the majority of high-cost funding carriers receive (Verizon Massachusetts only receives IAS support).[89] Massachusetts DTC does not oppose the IAS elimination but does state: "The MDTC would expect that any elimination of high-cost funding by net-payor states such as Massachusetts will be offset by a more equitable distribution of money to states through the CAF and/or through interim measures for broadband deployment taken by the Commission during the transition."[90]

Universal service reform and carrier of last resort obligations

Although the NPRM does not raise carrier of last resort ("COLR") issues, some comments raise this topic. The MDTC is "troubled" by the lack of discussion of COLR

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87 / CenturyLink, at 39. *See also*, Qwest, at 20.

88 / Massachusetts DTC, at 7.

89 / Massachusetts DTC, at 7.

90 / Massachusetts DTC, at 7.

obligations in its NPRM and suggests that the Commission must address how USF reforms will impact those obligations.[91] Rate Counsel shares Massachusetts DTC's concern that the FCC's NOI/NPRM fails to address carrier of last resort obligations,[92] and recommends that, at a minimum, the FCC clarify that COLR issues are subject to state authority. In any event, regardless of whether carriers receive USF support, whether they have market power or possess COLR obligations should be viewed as separate matters.[93]

Also, Rate Counsel echoes Massachusetts DTC's recommendation that the FCC ensure that "American consumers' ability to subscribe to *affordable*, basic voice service does not fall by the wayside."[94] In Rate Counsel's view, universal service reform is an integral component of achieving the goal of affordable service because consumers must pay for the federal USF as part of their telephone bill. In addition, affordability may be better accomplished in the Lifeline and Link-Up programs rather than through the high-cost fund. As Rate Counsel has demonstrated in past filings there is no evidence that the high-cost funds have increased affordability.

Rate Counsel disagrees with carrier comments that seek to shirk COLR obligations by linking them to universal service support. AT&T proposes that carriers

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91 / MDTC, at 8.

92 / Massachusetts DTC, at 8-9. Rate Counsel is aware of only one instance where the FCC mentions COLR, and that is briefly in OBI Technical Paper No. 1 (Appendix C to the NOI), at 38 stating: "While funding only one broadband provider in each currently unserved market leads to the lowest gap, this choice may carry costs of a different sort. In areas where a wireless provider receives support to provide both voice and broadband service, the incumbent wireline voice provider may need to be relieved of any carrier-of-last-resort obligations to serve customers in that area. In such a circumstance, it may be that only wireless operators will provide service in these areas."

93/ The FCC recently determined, for example, that Qwest Corporation possesses market power in the Phoenix, Arizona Metropolitan Statistical Area. In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160 (c) in the Phoenix, Arizona Metropolitan Statistical Area, WC Docket No. 09-135, Memorandum Opinion and Order, released June 22, 2010.

94 / Massachusetts DTC, at 9, emphasis in original.

should not have to provide services in areas where high-cost universal service support is withdrawn,[95] and further asserts that state COLR obligations "threaten to impede a successful transition of the Commission's high-cost universal service support mechanism from POTS to broadband."[96] AT&T argues that ILECs spend billions investing in the public switched telephone network, money that it argues could be being invested in broadband instead."[97] Rate Counsel disagrees with AT&T. Broadband deployment should not become an acceptable excuse for inadequate investment in the public switched telephone network, and, therefore, Rate Counsel cautions the Commission against simplistically embracing a view that would result in carriers turning their backs on the investment necessary to provide adequate local basic service. Rate Counsel concurs with Verizon that the Commission should "curtail inefficient funding of voice service and instead focus on universal service funding to support the modern communications network,"[98] but the Commission should unambiguously clarify that during the transition to a more modern, broadband-based network, carriers continue to be responsible for providing reliable and adequate local exchange service. In other words, the nation's transition to a broadband economy should not be allowed to become ILECs' excuse to neglect the quality of basic local exchange service.[99] Similarly, Rate Counsel opposes

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[95] / AT&T, at 17-18.

[96] / AT&T, at 19.

[97] / AT&T, at 19.

[98] / Verizon, at 7. *See also, id.*, citing NPRM, at paras. 51-52 and stating that the "continued growth of the fund will ultimately drive end users off the very networks that USF was created to support."

[99] / Rate Counsel urges the Commission to require carriers to continue to submit ARMIS reports after they would otherwise expire in September 2010, a recommendation that Rate Counsel has made previously in filings to the FCC. *See, e.g.,* In the Matter of Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, WC Docket No. 05-25; RM 10593, Reply Comments of the New Jersey Division of Rate Counsel, February 24, 2010, at 34.

USTelecom's recommendation that a carrier be relieved of any ETC, COLR and dominant carrier regulations in any area it operates and in which it is not the supported carrier (in terms of high-cost support).[100] COLR and dominant carrier regulation are separate and distinct regulatory matters that exist entirely apart from high-cost support.

High-cost support for competitive eligible telecommunications carriers should expire.

The FCC proposes to phase out competitive eligible telecommunications carrier ("CETC") support over a five-year period.[101] Rate Counsel's review of initial comments does not alter its previously articulated position that consumers should not subsidize more than one network in those areas where it is apparently difficult for even just a single carrier to provide service without support.[102] CETC support often funds wireless carriers, which at this time do not provide substitute services for basic local exchange service.[103]

USTelecom similarly supports phasing out CETC support and concurs with the Commission proposed five-year period.[104] CenturyLink recommends that the FCC eliminate the identical support rule, suggests that CETCs "should no longer receive IAS and ICLS ...as soon as possible" (because there is no reason for CETCs to receive access

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100 / USTelecom, at 7.

101 / NPRM, at paras. 60-61

102 / See Rate Counsel November 2008 comments, at 42-43; Rate Counsel June 2008 USF Reply Comments, at 76.

103 / See Rate Counsel April 17, 2008 Comments, at 59-60. Rate Counsel stated: "Rate Counsel further supports the outcome described by the Joint Board that support should be provided to at most only one wireline, one wireless, and one broadband provider in any given area." *Id.*, at 60.

104 / USTelecom, at 14. In support of the phase-out, USTelecom further asserts that CETC funding does not go to carriers of last resort. *Id.*, at 15. CenturyLink proposes to freeze the CETC funding by total dollar value in each state and then to phase out the support over a five-year period, and further indicates that the interim Commission-imposed freeze on CETC payments should be made permanent. CenturyLink, at 41.

charge replacement)[105] and asserts that the elimination of the identical support rule "has been endorsed by virtually all policymakers."[106] Rate Counsel urges the timely phase out of CETC support – each year of delay denies consumers the benefit of a lower USF contribution charge.[107] Furthermore, as NCTA explains, in those markets where there is one or more unsubsidized competitor serving the vast majority of households in an area, "five years is far too long a period to allow either incumbent or competitive providers to continue collecting support."[108]

CenturyLink further recommends that the Commission use the CETC-related savings on an interim basis to distribute monies for broadband infrastructure development.[109] Rate Counsel does not oppose the use of monies resulting from the reform of USF support now provided to CETCs to "jump start" broadband deployment,[110] provided that such support is provided equitably throughout the country on a proportional per capita basis: just as rural areas may require relatively more support for broadband infrastructure, urban areas may require relatively more support to ensure that consumers can actually afford to purchase broadband services. It is essential, therefore, that national universal service policy address not only the "supply" side of the equation (i.e., the infrastructure), but also the "demand" side of the "broadband equation"

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105 / CenturyLink, at 41.

106 / CenturyLink, at 40, cite omitted. *See,* however, Massachusetts DTC, which opposes the elimination of support to CETCs and proposes instead that the Commission provide support to CETCs based on their own costs. Massachusetts DTC, at 5. If the Commission nonetheless eliminate CETC support, Massachusetts DTC recommends that the Commission phase out the support uniformly among all CETCs. Massachusetts DTC, at 6.

107 / *See* CenturyLink, at 42, and footnote 118 citing to the National Broadband Plan's estimate that current CETC payments total about $1.4 billion.

108 / NCTA, at 15.

109 / CenturyLink, at 55-56.

110 / CenturyLink, at 56.

(i.e., consumers' ability to purchase service and information about how to use the service).[111]

Although Verizon supports the elimination of CETC support in favor of a new Mobility Fund to support wireless deployment in areas that lack 3G wireless coverage and possibly to fund the CAF, Verizon opposes being forced to fund these reductions "ahead of the rest of the wireless industry because of two-year-old merger conditions" which purportedly "unfairly disadvantages them."[112] As CenturyLink explains, "[i]n 2008, Verizon Wireless voluntarily committed to eliminating the universal support that its newly acquired subsidiaries had been receiving prior to the merger with ALLTEL."[113] Rate Counsel is not persuaded that Verizon and Sprint should be able to shirk their merger conditions simply because they would be ahead of the rest of the wireless industry in foregoing high-cost support. Mergers bring risks and rewards, and Applicants that negotiate billion-dollar transactions must incorporate market and regulatory uncertainty into their decision-making as they determine the conditions to which they will agree in order to obtain regulatory approval. Presumably if an unforeseen and *favorable* regulatory development occurred that affected its merger conditions, it is unlikely that Verizon would seek to "re-balance" its merger deal. For these reasons, the Commission should reject Verizon's proposed deferral of the merger conditions.[114]

Rate Counsel also recommends that the Commission examine, and as appropriate remedy, the concern that Sprint raises regarding the implementation of company-specific

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[111] / *See*, Sprint, at 2 suggesting that the Commission "rely heavily on a low-income mechanism to achieve universal broadband service."

[112] / Verizon, at 3-4; *see also, id.*, at 19-22

[113] / CenturyLink, at 42, cite omitted.

[114] / Verizon, at 4.

CETC caps applicable to AT&T and Alltel. According to Sprint, "neither of these caps was put into effect due to 'administrative reasons,' even though such caps were imposed as a condition of approval of Alltel's and AT&T's respective transactions before the Commission."[115] If an "administrative glitch"[116] exists – for which consumers must bear the cost through an excessive USF contribution factor – Rate Counsel urges the Commission to remedy such glitch in a timely manner.

The FCC should reject carriers' proposals to adopt a numbers-based contribution mechanism.

Verizon seeks the Commission's replacement of "the revenue-based system with a small charge on each working phone number and/or network connection."[117] Rate Counsel disagrees with this proposed reform for the reasons set forth in detail numerous pleadings submitted by NASUCA. The Commission should not replace its revenue-based system, but instead should, as Rate Counsel has recommended in previous pleadings to the Commission, ensure that broadband revenues be assessed in order to derive broadband subsidies.

Rate Counsel concurs with Verizon that during the transition, savings from USF reform should not be "stockpiled."

Reform of the existing high-cost fund mechanisms is warranted entirely apart from pursuing the national goal of broadband deployment, and, therefore, Rate Counsel disagrees with CenturyLink that USF should not be reduced until the CAF is established.[118] Rate Counsel concurs with Verizon that reductions in funding to wireline

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115 / Sprint, at 14-15.

116 / Sprint, at 15.

117 / Verizon, at 5, 24-26.

118 / CenturyLink, at iv, with qualification that reductions should occur that result from eliminating support for duplicative networks.

and wireless carriers that result from the FCC's reform should immediately translate into a lower contribution factor, rather than being used to stockpile funds for a future day.[119]

Respectfully submitted,

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[119] / Verizon, at 22-24.